

NTSB Order No. EA-4314

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of January, 1995

Docket SE-13582

respondent has appealed that ruling, arguing that she was not required to notify the Administrator that the State of California had suspended her motor vehicle operator's license for four months in 1993 because the reason for that suspension was not among those that trigger a duty to report under the regulation.²

Finding no error in the law judge's contrary determination, we affirm his decision and the Administrator's order of suspension.³

FAR section 61.15(e) obligates Part 61 certificate holders to report, within 60 days, certain motor vehicle actions in which they have been involved to the FAA's Civil Aviation Security Division (AAC-700). The regulation defines "motor vehicle action" to mean, among other things, the "cancellation, suspension, or revocation of a license to operate a motor vehicle by a state...for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug...." (FAR section 61.15(c)(2)). Respondent takes the position that this regulation did not apply to the suspension she incurred because it was based only on the fact that she was found, following her arrest while operating a motor vehicle, to have a prohibited blood alcohol level (.08 per cent or above),

²The Administrator has filed a reply opposing the appeal.

³The law judge found it mitigating that respondent's failure to file the report resulted from her reliance on advice of the attorney who represented her in the state motor vehicle case. He therefore reduced the sanction sought by the Administrator from a suspension of 30 to one of 25 days. No appeal from that reduction was taken.

not on the ground that she had operated a motor vehicle while intoxicated, impaired, or under the influence of alcohol. We have no difficulty concluding that the FAA reporting requirement applied to California's suspension of respondent's motor vehicle license for driving with an excessive blood alcohol level (BAL).

Respondent's argument that no report was required for the motor vehicle action in which she was involved is predicated on a reading of section 61.15(c)(2) that fails to take into account its plain intent to reach alcohol or drug related motor vehicle license actions that do not result in a conviction for operating a motor vehicle while intoxicated, impaired, or under the influence.⁴ That intent is manifest in the regulation's requirement that reports be made of license actions taken not just for those operational offenses, but also for causes "related to" those operational offenses. It is therefore irrelevant that the offense for which respondent's motor vehicle license was suspended under California law was not predicated on any finding that she was actually intoxicated, impaired or under the influence of alcohol. The issue before us is not whether the evidentiary basis for the offense of driving with an excessive BAL is the same, under California law, as that for the offense of driving while intoxicated, impaired or under the influence of alcohol, but, rather, whether the two offenses involve associated conduct.

⁴Convictions for those offenses are embraced by the definition of motor vehicle action in FAR section 61.15(c)(3).

In our judgment, driving with an excessive blood alcohol level is unquestionably a cause related to operating a motor vehicle in a manner reflecting the adverse effects of too much alcohol consumption. Indeed, we think it fair to assume both that California would not outlaw driving with any specific BAL absent some concern over its potential impact on safe motor vehicle operation, and that a BAL of .08 would not be deemed or termed "excessive" unless it was believed to present an unnecessarily high risk that an individual having such a BAL may be intoxicated by alcohol, have alcohol-impaired judgment, or otherwise be under the influence of alcohol. In sum, we agree with the Administrator that a state motor vehicle license suspension based on excessive blood alcohol level is a cause related to the specifically enumerated offenses involving alcohol in the regulation.⁵

As noted, supra, the Administrator sought a 30-day

⁵Even if we were not persuaded that a suspension for excessive blood alcohol level qualified as a cause related to operating a motor vehicle while impaired, intoxicated, or under the influence of alcohol, it would not necessarily follow that respondent had no duty to report under the regulation. Documents attached to the Administrator's motion for summary judgment reveal that while respondent's driver's record recites that her license was suspended for excessive blood alcohol level, that action was based on an order issued by a police officer, on January 12, 1993, which indicated that respondent's license, effective 45 days thereafter, would be suspended or revoked because she had been arrested *for driving under the influence of alcohol or drugs* and the officer believed that a blood test would show respondent's BAL to be .08 or greater. Given our view that the excessive BAL offense should have been reported, we need not decide whether the suspension ordered by the arresting officer, later temporarily stayed by a state court, created an additional or independent ground for reporting the incident to the FAA.

suspension of respondent's private pilot certificate for the reporting failure, but did not appeal the law judge's reduction in sanction to a 25-day suspension, which was based on the, we think, questionable rationale that a reduction in an otherwise appropriate sanction was warranted because the respondent's decision not to file was attributable to the erroneous advice of counsel. On appeal, respondent in effect urges, in the event the violation finding is sustained, that no suspension period be imposed, in light of respondent's asserted good faith belief that no report was required. We do not believe that any further reduction of sanction can be justified. While, in our view, the reporting obligation was clear and unambiguous, there is no showing here that respondent or her counsel made any attempt to resolve, before the deadline for the report passed, any confusion they may have entertained over the applicability of the reporting requirement to the specific offense for which respondent's license was suspended in California.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The June 14, 1994 "Decisional Order" of the law judge is affirmed; and
3. The 25-day suspension of respondent's private pilot certificate shall begin 30 days after service of this opinion and order.⁶

HALL, Chairman, HAMMERSCHMIDT and FRANCIS, Members of the Board, concurred in the above opinion and order.

⁶For purposes of this opinion, respondent must physically surrender her certificate to an appropriate representative of the Administrator, pursuant to FAR section 61.19(f).